1941
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File No. O. Watan/4

Legal DEPARTMENT
B BRANCH

Subject:—

Opinions under the Bombay Hereditary Offices Act, 1874

P.27E

File No. O. Watan/41

Ltd. Sect. Slip. 21 A

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C O N T E N T S.

Legal Department File No. O. Watan / 1941.

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Office of the R.L.A.

As pointed out by the Remembrancer of Legal Affairs in paragraph 2 of his opinion No. 7745 dated 31-7-1939, the lease of the land to the Poona Cotton and Silk Manufacturing Company by the Mahars of Munjeri in 1908 for a period of 50 years on an annual rent of Rs. 200 with the sanction of Government determined on 3-10-1928 when the Maharki watan at Munjeri was abolished by Government under rule 4 of the Resumption Rules and the land became Government land. It was therefore open to Government in 1928 either to resume the land or to enter into a fresh aggreement with the Company. It appears from the letter of the Collector dated 19-12-1940 at p. 119 ante read with the Government Resolution (Revenue Department) No. 1323/28, dated the 14th April 1930 that under the authority of Government the Collector informed the Company on 8-5-1930 that the land was no longer Mahar Inam land, but ordinary Rayatwari land lease out to the Company and that on the expiry of the period of the lease the land would revert to Government and the payment of the cash allowance would cease (p. 97). The implication of this letter clearly was that the land would continue to remain in possession of the Company up to the date of the expiry and on the conditions of the original lease This is confirmed by the fact that in pursuance of the above letter of the collector, Government has allowed the Company to continue in the possession of the land and has received from it every year only the rent payable under the original lease. Government has even given a rebate in rent by way of a cash allowance for part of the land acquired. In these circumstances Government would be deemed to have agreed to lease the land to the Company on the terms of the lease of 1908.till 1958. It would not therefore be legally open to Government either to terminate the lease or to increase the rent before the expiry of the period of the lease of 1908 i.e. before 1958. It appears however from paragraph 10 of the petition at p. 58 ante that the company may agree to an increase of rent. The proper course for Government would therefore be to negotiate with the company and if possible persuade it

S.A.K.

to accept a reasonable enhancement of rent during the remaining period of the lease.

O.C. P.N.M.

Remembrancer of Legal Affairs.

U.R. to R.D.No. 913, dated the 31st January 1941.

S.A.K.
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1058/1-8-41.

Submitted with reference to letter No. W.T.N.S.R. II -17, dated 29th January 1941 from the Collr. of West Khandesh at p. 1 ante.

2. The Collr. Has forwarded a draft of the certificate to be issued under second part of section 10 of the Bombay Hereditary Offices Act, 1874 (Bom. III of 1874).for the approval of the N.L.A. The Watan land in question was originally held by one Appa Ananda. It wase sold in 1934 by the Civil Court in satisfaction of the decree obtained against the holder by one Bohori. Appa Ananda died immediately after the sale of the land and his son Nathu Appa succeeded him. The Collr. has raised the pointed whether the certificate should be issued in the name of the deceased Appa Ananda or his son Nathu Appa, the present party to the Civil suit.

3. The draft certificate is in the standard form No. II given t p. 279 of part I of Phadnis's Watan Act and as slightly corrected is in order. The prohibition of alienation contained insection 5(1)(a) is for a period beyond the life time of the natural life of the watandar. The certificate should therefore be issued in the name of the deceased Appa Ananda.

4. Subject to approval the Collr. may be informed that the draft certificate as slightly ammended order . The certificate should be issued in the name of the deceased Appa Ananda/A

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5-2

A.S. I agree the ~~xx~~ reply may be as at

A-A

Sd/-
5-2

D.S. Sd/-
6-2

R.L.A. P.M.M.

7-2

No. 1260

Office of the R.L.A.
B.C. 10 th Feb. 1941.

R.W.C.

2. The draft certificate as slightly amended is in order . The certificate should be issued in The name of the deceased Pppa Ananda.

Sd/-
for R.L.A.

S.A.K.

25-4

The resumption of lands held for service is regulated by Resumption Rules made by Government under Act XI of 1852 and Act VII of 1863 and published in Government Notification No. 10336, dated the 12th October 1908 and printed at pages 248-250 of Phadnis's Watan Act. In cases where the grant is only of the revenue of the land, the levying of full assessment on such land and crediting the assessment so levied to Government would amount to resumption. In this case, as pointed out in R.L.A.'s opinion No. 8772, dated the 5th October 1940, page 37, the circumstances in which lands held for service can be resumed are not present. Consequently it would not be possible for Government to make the land Khalsa by levying full assessment on the land and crediting it to Government. The course suggested by the Collector in his letter dated 5-4-40 (pages 17-18) is therefore not feasible.

2. Section 23 of the Watan Act empowers the Collector to fix the emoluments of the officiators and to direct the payment thereof to the officators for the time being. Under this section therefore the Collector can make the remuneratio n of the officiators equal to the assessment of the land and then direct hat such amount shall be paid to the officiators. (See 14 B.H.R. p. 797). This is what R.L.A. meant when he stated in his opinion, "The Collector can under section 23 of the Bombay Hereditary offices Act direct that full assessment shouldbe levied on the land and the same should be paid to the officiators". The view taken at 'A' in R.D. note at page 40 that what R.L.A. meant was that the land should be continued
continued as Matadari land and that the Collector should direct the holder of the land to pay the empluments of the officiator (which may be equal to the assessment) is correct.

3. The next question raised by R.D. is whether Government can levy non-agricultural assessment on the land, pay the remuneration of the officators out ofit and credit the balance to the public revenues. Under section 65 of the Land Revenue Code an occupant of land is liable to pay altered assessm -ment on his using the land for a non-agricultural purpose.

"Occupant" as defined in section 3(16) means a holder in actual possession of unalienated land. Consequently the holder of an alienated land in a Khalsa village is not liable to pay altered assessment under section 65, Land Revenue Code (see Anderson's Land Revenue Rules, note 231, p. 67). It would not therefore b e legally feasible for Government to levy altered or non-agricultural assessment on the land xx in the present case.

4. It may be pointed out that the question whether the grant in this case was of the soil or of the revenue only does not appear to have been properly investigated. The collector Mr. Maclachlan in his Order dated 19th January 1938, pages 7-9 did not decide this issue. He has merely stated in that Order that the evidence whrther the actual possession of the land was handed over to the officiator for the time being was inconclusive, It is true thatin the subsequest letters of the Collector, Mr. Drewe, it has been stated that as there is no documentary evidence to show that the original grant was of the land itself, the assignment must be presumed to be of land revenue only. From Mr. MacLacholan's order dated 19-1-1938, it appears tht there was some evidence hbefore him which he regarded as inconclusive but which showed that the possession of the land was handed over to the officiator for the time being. It may also be pointed out that the provisions of sections 6 to 11 tof the Hereditary Offics Act are usually held applicable to Patil Inam lands. (See 37 B.L.R. p. 599, 38 B.L.R. p. 1308, 14 B.L.R. p- 797 and 21B.L.R. p- 1155). In Amrit Vs. Hari, 22 B.L.R. p-275at p.285 it has been observed as follwa:

"In the case of watan property the distinction between grants of the roYal share of the revenue and grants of the soil, which is admissible in the case of inams and saranjams,

cannot be conveniently made without detriment to the statutory restriction on the watandar's power of alienati -on and should not be made unless it is clearly justified by the by the terms of the settlement."

See also observations under the heading "Grant of revenue or soil" at page 61 in Part I of Phadnis's Watan Act, 1936 Edn. The Revenue Department should therefore ask the Collector to make further enquiries and collect and examine all evidence relating to land in order to decide whether the grant in this case was of land or of its revenue only.

O.C. Sd/- P.N.M.

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Remembrancer of Legal Affairs.

U.R. to R.D., No. 1353, dated the 13th February 1941.

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Office of the R.L.A.

In Kalu vs. the Secretary of State (30 B.L.R. 1404) the Bombay High Court has held that any decision of the Collector under section 9(2) of the Bombay Hereditary Offices Act, 1874 as to the amount of rent leviable is final in the sense that it cannot be questioned either by an appellate or a revisional authority under the Act or by any suit in a civil court. This decision of the High Court is binding on Government since Government was a party to the litigation. By analogy therefore the orders passed under sections 18 and 57 being final cannot also be questioned either in appeal or in revision in under the Act. Consequently the view taken by the Commissioner in his letter at p. 30 ante is correct. The Remembrancer of Legal Affairs' opinion No Wat. 1/29, dated the 9th February 1929 which was given prior to the decision of the High Court in Kalu vs. the Secretary of state cannot now be considered to be valid.

O.C. P.N.H.
11-3
Remembrancer of Legal Affairs.

U.R. to the R.D., No. 2220, dated the 14th March 1941.

S.A.K.
25-4

Office of the R.L.A.

It is a general principalle of law that Government is not liable for the illegal acts of its servants (Shivabjajan vs. Secretary of State 28 Bom. 314. Rose vs. Secretary of State 37 Mad. 55; and Secretary of State vs. Cock craft 39 Mad. 361) In the present case Mr, Deshpande was illegally removed from his office by the Collector beforethe expiry of histerm of office and conseqgently the actiontaken by the Collector was clearly illegal. Government would not therefore be liable to pay compensation to Mr. Deshpende for his unlawful removal from office by the Collector. No suit, if any is filed by Mr. Deshpande against the Provincial Government for compensation in this matter wouldbe defensible.

O.C. sd/ P.M.M.

12-3

Remembrancer of Legal Affairs.

U/R. to the R.D.,No. 2278, dated the 14th March 1941.

S.A.K.
25-4

Office of the R.L.A.

The Rules regarding the resumption and continuance of lands held for service have been framed by Government in exercise of the powers confrred by Act XI of 1852, Schedule B, sections 8 and 10 andby Act VII of 1863 section 2 clause 3 andof all other powers enabling Government in this kxkkf behalf. Ehe term "land " as defined in clause (B) of section 16 of Act II of 1863 and clause (b) of section 32 of Act VII of 1868 does not include cash allowance. Consequently the Resumption Rules cannot apply to the cash allowance appertaining to a hereditary office. In R.L.A's opinion No. 11748 dated 9-11-1939, the question regarding resumpti n of cash allowances payable to hereditary officers was not specifically condidered. The question was xxxdix considered only wi.h reference to the resumption of service lands . The words "watan property" in the concluding part of the R.L.A's opinion have reference only to watanlands. It is true that cash allowances form part of "watan property" but they cannot be resumed under the Resumption Rules of 1908. There is also no other provision of law under which cash allowances can be resumed. The question whether any particular cash allowance can be resumed would therefore depend on the terms and conditions on which it was granted. If it is in the nature of a "cash payment" voluntarily made by Government in addition to the watan property (see the definition of this term in section 4 of the Hereditary Offices Act), it can be withdrawn or modified by Government . In other cases andin which the conditions of the grant do not empower Government to resume the allowance, it would not be possible for Government to resume or reduce it. Legislation wouldbe necessary for this purpose.
(para. 11 of R.L.A's No. 7923 dated 7-8-1939)

J. C. Sd/- P.N.M.

15-4

Remembrancer of Legal Affairs.

U.R. to R.D.No. 3310, dated the 16th April 1941.
S.A.K.K - 25-4

Office of the R.L.A.

Attention of the Revenue Department is invited to the proviso to rule 4 of the Resumption Rules which provides inter alia that if the Collector is at any time satisfied that the performance of the service, in respect of which any lands are held, is no longer necessary, he may resume the lands. The Collector therefore already possesses the power to resume the lands in cases in which he is satisfied that the service is no longer required, and when he so resumes the lands, the watan office is to be deemed to be held in abeyance. (See R.L.A's opinion No. 11748, dated 9th November 1939). No order delegating any powers to the Commissioner or Collector therefore appears to be necessary.

O.C. Sd/- P.N.M.

9-4

Remembrancer of Legal Affairs.

U.R. to the R. D., No. 3254 dated the 13 th April 1941.

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25-4

No. 5518

office of the

Remembrancer of Legal Affairs.

Bombay Castle, 21st June 1941.

From

P.N.Moos, Esquire, I.C.S.,

Remembrancer of Legal Affairs;

To

The Commissioner,

Central Division, Poona.

Subject:- Scrutiny of certificate ~~xxx~~ under section 10 of the watan Act.

Sir,

With reference to your endorsement No. W.T.N./N-6-55, dated the 2nd June 1941, I have the honour to forward herewith a revised draft certificate.

2. Section 10 of th Bombay Hereditary Offices Act requires that the certificate should be issued under the hand and seal of the Collector. Under section 10 of the Bombay Land Revenue Code, the District Deputy collector can exercise this power of the Collector, It is presumed that the Co lector has not directed under the proviso to the second paragraph in section 10, Land Revenue Code, that the District Deputy Co le ctor should not exercise this power, I am therefore to state that before the certificate is issued, the Collector may be aked to verify whether this presumption is correct.

3. Papers of th case accompany.

I have the honour to be,

Sir,

Your most obedient servant,

Sd/-

O.C.

for Remembrancer of Legal Affairs.

Sd/-

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S.A.K.
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Office of the R.L.A.

The watan property as defined in section 4 of the Bombay Hereditary Offices Act, 1874, includes cash payments in addition to the original watan made voluntarily by Government and subject periodically to modificatio. or withdrawal, The original definition of 'Watan property' given in clause III of Bill No. 12 of 1873 viz. the Hereditary Offices Bill (which became the Bombay Hereditary Offices Act, 1874) did not includes cash payments settled by Hoverament . The words 'it includes cash pa,ments in addition to the original watan property made voluntarily by Government and subject periodically to modification or withdrawal' we.e added on an amendment proposed by the Hon'ble Mr. Rogers. He stated to the Council that this 'amendment related to cash emoluments allowed by Governm ent for the remuneration of Patells and other officers in villages where the value of the original watan could not beregardéd as xxx a sufficient remuneration for the prper proper performance of their duties. (Please see page 136 of Bombay Government Gazette 1874-Part V. Proceedings of the Legislative Council)- It is thus clear that this portion was added to the original definition of 'watan propertyy' so that scale allowances etc. fixed by Government from time to time may be included in the expressin -n 'watan property'. The expression 'original watan' means property attached to the watan at the time when it was created and if cash payments formed part of the watan property at the time when the watan was created, they wouldform part of the 'original watan property': but cash payments volunatrily made by Government subsequent to the creation of the watan would not form part of the 'original watanproperty' and such cash payments can be reduced or modified by Government unless the terms of the grant otherwise indicate. The question whether the cash allowance in any case does or does notform part of the original watan property and whether under the terms of its grnt it can be resumed are questions of fact,which must be decided in each' case separately on its own facts. The question raised in these

papers is in respect of the Kulkarni allowances in Ratnagiri and Kolaba Districts and this is considered below.

2. It appears from the Commissioner's letter at page 1 ante that there is no information regarding the basis on which the cash allowances are granted to the Kulkarnis in the Ratnagiri District. However, the fact that the cash allowances of some of the Kulkarnis were bought with the Watandars' consent would indicate that these cash allowances comprised the original watan property, since otherwise Government would have withdrawn them instead of buying them up. Consequently it would not be competent for Government either to reduce or withdraw such cash allowances.

3. The case of Kulkarnis in the district of Kolaba appears to be different. As stated by the Commissioner in paragraph 5 of his letter it appears that upto 1836 these Kulkarnis drew cash allowances amounting to Rs. ~~191~~ 919. In 1836 their allowances were increased to Rs. 2,625 and the cash allowance of some of them has since been raised from time to time. It is therefore clear that the the additional payments now made by Government over and above the cash allowances amounting to Rs. 919 paid to the Kulkarnis upto 1886 do not form part of the 'original watan property' and constitute 'cash payments' in addition to the 'original watan' made voluntarily by Government. It is presumed that the orders sanctioning thes e additional payments do not contain anything which would debar Government from reducing or withdrawing them. If this presumption be correct, it would be competent for Government, subject to the provisions of section 300 of the Government of India Act , 1935, to reduce or withdraw these additional payments.

O.C. Sd/- P.N.M.

8-7

Remembrancerof Legal Affairs.

U.R. to R.D., No. 6013, dated the 11th July 1941.

S.A.K.

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Office of the R.L.A.

In Lingappa Rayappa vs. Kadappa Bapurao (42 B/L.R. 833 which has not been overruled) the facts were that certain impartible watan property governed by the rule of lineal primogeniture was held by R who lived jointly with his brother M. R died in 1914 and M. in 1917. Thereafter the property passed into the possession of the defendant who was the son of M's first co nsin and who belonged to the next junior branch. In 1927 R's widow adopted the plaintiff. The plaintiff sued in 1934 to recover possession of property. It was held by the High Court that (1) R died in union with his brother M and the junior branches of the family including the branch of the defendant; (3) that at the time of plaintiff's adoption in 1927 there was therefore a coparcenary in existence and the plaintiff by his adoption became a member of that copercenary ; and (3) that that as the estate was impartible and succession to it was governed by the rule of lineal primogeniture, the plaintiff as representative of the senior branch, was entitled to succeed to the impartible property of the family and to divest the estate which had already vested in the defendant prior to the plaintiff's adoption,

2. The above ruling relates to rights which an adopted son acquires on his adoption in an impartible estate. Questions relating to entries in the watan register are however covered by the special provisions of section 36 of the Bombay Hereditary Offices Act, 1874. Consequently it would not be proper to conclude that by virtue of the decision in Lingappa Rayappa vs. Kadappa Bapurao, the present petitioner Shivanagouda can claim to have his name entered as Representative Watandar, although according to that decision he is the rightful heir to his adoptive father Basanagouda in respect of property the succession to which is governed by the rule of lineal primogenture.

3. Section 36 of the Bombay Hereditary Offices Act.

S.A.K.
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contemplates the determination by the Collector of succession to the last male holder soon after his death and under the proviso (3) the Collector is bound to set aside his orderonly when another person obtains a decree of a competent court within six years from such order that he is the nearest heir. Therefore if any claimant produces a decree after the lapse of six years from the date of entry of another person's name as the nearest heir, he cannot claim to be entered as Representative Watandar as of right. But the Collector can it seems amend the register at any time after the lapse of six years because the section does not enact that after th expiry of six years th entry shall be final or binding. It only says that the Collector is bound to amend if the decree is produced within six years. Therefore after the lapse of six years it becomes a matter of discretion with the Collector. (See Phadnis's Watan Act, t5th edition, page 149)

4. The question whether the adopted son should be recognised as the Representative Watandar in this case is therefore for Government to decide. There is no legal objection to either of the two courses which Government may deem proper to adopt viz., to set aside the Collector's order an direct the name of the adopted son to be entered in the watan register, or to decline to interfere with the Collector's order confirmed in appeal by the Commissioner.

O.C. sd/- P.N.M.

22-10

Remembrancer of Legal Affairs.

Sd/-
22-10-41

U.R. to R.D., No. 9221 dated 25th October 1941.

S.A.E.

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Office of the R.L.A.

A grant to an Inamdar may be either of the royal share of the revenue or of the soil. In view of the Privy Council decision in Secretary of state vs. Laxmibai (25 B.L.R. 527) there is no presumption either way and the question as to the nature of the grant is to be determined on the facts of each case. It has been held tht in the case of watan property the distinction between the grants of the royal share of therevenue and grants of the soil which is admissible in the case of inams and saranjams cannot be made without detriment to the statutory restrictions on the watandars and should not be made unless it is clearly justified by the terms of the settlement (Amrit vs. Hari I.L.R. 44 Bom. 337).

2. The Collector of Ahmedabad in his letter dated 28th June 1941 at page 51 ante states that in the original Tippan of 1854-55 the land has been described as "Chakaria Nakru. Mal Dhani Kushaldas Laxmidas deceased, vahivatdar his son Vrajbhai Kushal-das". "Chakaria" means service and "Nakru" means rent free ((13Bom. 330). "Mal" means land and "Dhani" means an owner. The expression "rent free " raises a presumption that the grant was of theland itself and not of the land revenue because exemption from rent implies that the State was entitled to levy rent and not merely full assessment. It is not however safe to rely upon such a presumption (see R.L.A's opinion No. C. Inams-3/29, dated the 19th August 1929). "Mal Dhani" (i.e. owner of land) implies the grant of the soil (see also the Collector's letter at page 51 ante). The principle of settlement in the case of superior village servants such as the Patel and Kulkarni was to provide adequate remuneration for the officiator for the time being. The sources of income were generally three : land for the most

part exempt from rent, direct levies in cash or kind from ryots or compensation inlieu thereof, and cash payments from Government treasury (see Phadnis's Bombay Hereditary Offices Act. partI Introduction p. XXXV. If the nature of the grant in the present case is considered in the light of the above principle the probabilities would be more in favour of the grant being one of soil. The questionis however not free from doubt.

O.C. Sd/- P.N.M.

28-10

Remembrancer of Legal Affairs.

Sd/-

24-10-41.

U.R. to R.D., No. 9255, dated the 27th October 1941.

S.A.K.

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Office of the R.L.A.

It appears from the Revenue Department office note at p. 1 ante that the Collector of Nasik has reduced the number of Mahar officiators in certain villages under section 64(1)(c) read with section 67(c) of the Bombay Hereditary Offices Act and has correspondingly reduced the remuneration by imposition of an additional judi on the Mahar watan lands under the proviso to rule 4 of theRules framed by Government concerning the resumption and continuance of lands held for service. The question for consideration of the Remembrancer of Legal Affairs is whether the Mahar watan lands can be resumed for non-payment of the additional judi levied by the Collector.

2. Section 64(1)(c) of the Bombay Hereditary Offices Act, 1874, provides for power of the Collector to require in cases where the registrationis made in the name of the wholebody of watandars that they appoint so many fit persons as may be necessary to perform the duties which the Collector may assign to them severally and jointly. Section 67(c) enacts that in the register of lands of allowances in consideration whereof liability to serve still exists the Collector shall specify the number of officiators required to perform the duty. It is clear from these provisions that the power to determine the number of officiators vests in the Collector. Consequently the action taken by the Collector of Nasik in reducing th number of Mahar officiators in certain villages was competent.

3. The proviso to rule 6 the of the Rules framed by Government in exercise of powers conferred by Act XI of 1862, Schedule B, sections 8 and 10, and by Bombay Act XX VII of 1863, section 2, clause 3; nd of all other powers concerning the resumption and continuance of lands held for service, provid es that if the Collector is at any time satisfied that for the service

performed the remuneration derived from the profits of the enjoyment of service lands is unnecessarily high the Collector may in his discretion direct either (1) the resumption of such lands, or (2) the continuance of the same subject to such new conditions as he shall deem fit to impose or (3) the resumption of a portion of such lands and the continuance of the rest thereof subject to such conditions as aforesaid. The action of the Collector in imposing extra judi on the lands in question is therefore legal.

4 Under section 187 of the Land Revenue Code 1879, all sums due on account of land revenue nd all quit-rents are moneys leviable under the provisions of Chapter XI. Section 153 of this Chapter empowers the Collector to forfeit the occupancy or alienated holding in respect of which an arrear of land revenue is due. The extra judi levied by the Collector of Nasik under the proviso to Rule 4 of the Resumption Rules is obviously land revenue (See Phadnis' Watan Act, p- 226). Consequently it would be competent for the collector of Nasik to forfeit the Mahar watan lands under section 153 of the Land Revenue Code for failure to pay the extra judi levied by Him.

O.C. Sd/- P.N.M.
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Remembrancer of Legal Affairs.

Sd/-

10-11-41

U.R. to R.D., No. 9703, dated the 11th November 1941.

S.A.K.

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Office of the R.L.A.

Section 7 of the Bombay Hereditary Offices Act, 1874, provides that watan property assigned under section 23 as remuneration of an officiator and th profits of the watan prope ty so assigned shall not be alienated or assigned to any person whatever without the sanction of Government. The object of this provision is to make the assigned property available to the officiator for his remuneration. It is doubtful whether Government can give sanction to the lease of such property subject to the condition that the rent sh ld be paid direct to Government. It is also doubtful whether such post facto sanction would validate the lease. Besides the Commissioner's proposal to recover the rent of Rs. 481, pay Rs. 300 out of it to the three officiators as remuneration and to credit the balance to Government would amount to resumption of th watan land and gra t of a cash allowance in its stead. Such action would not be legal unless the consent of the Mahars is first obtained. The course proposed by the Commissioner would not, therefore, be feasible (See R.L.A.'s opinion, No. 7021, dated th e 4th December 1935).

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U.R. to R.D., No. 112 dated the 7th January 1941.

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The question for consideration is whether the Chikurde watan ~~xxxxxxx~~ properties retain their watan character even after resumption by Government. It appears from the endorsement of the District Government Pleader at p. 11 ante that the contention that the property even after resumption by Government retains the watan character is raised on the basis of the decision in Dundoobai Anandrao Deshmukh v. Vithalrao Anandrao Deshmukh (38 B.L.R. 193) relating to this very estate that after resumption all the other rights of the Inamdar remain unaffected. The question in thatcase was whether the estate was ~~xxxxxx~~ extinguished by resumption of the ~~xxxx~~ watan grant by Government and relying on the decisions in Vishnu Trimbak v. Tatia Pant (1 B.H. C.R.22) and Gangabai v. Malappa Dari Mukrya (I.L.R. 9 Bom. 419) both of which were followed in Gurubasappa V. Rango Venkatesh (29 B.L.R. 1503) it was held that the effect of resumption by Government of the watan was that Government levied the full assessment on the lands and the right to hold them free of assessment or at a reduced assessment would therefore no longer remain alienated lands (see the definition of the term "alienated" in section 3(29) of the Bombay Land Revenue Code, 1879). The resumption has the effect of converting the lands from service tenure lands into lands liable to pay full assessment to Government (14B.L.R. p. 563). Consequently all the lands of the Chikurde ~~xx~~ estate will have to be treated as "Khalsa " and they no longer retain the watan character. It is true that in Gangabai v. Malappa Dari Mukrya (I.L.R. 9 Bom. 419) it was held that even after resumption all the other rights of the Inamdar remain undffected. "All the other rights" mean rights other than that to the reduced assessment and these rights would comprise all those rights which the Inamdar would be entitled to as owner of an unalienated land. This is clear from the decision in Gurubasappa v. Rango Venkatesh (14 B.L.R. 563) where it was held that the mortgage effected before resumption would remain

unaffected. Consequently "all other rights " would not include the rights of a privileged tenure under the watan Act.

It is therefore, clear that the properties in questiondo not retain their watan character any longer. The suit No. 880 of 1938 which has been filed in the Satara Court is between private parties. Governmentis not a party to this suit. The Collector and the Court of wards will represent the/estate under his Superintendance. The decision in the suit will therefore not be binding on Government It will also not be proper for the Collector acting as Court of Wards to produce the two Government Resolutions in Court, for the court of ward is not concerned in the question whether the plaintiff or the defendants should be declared as heirs to the suit properties. As the Court's decision on the issue whether the suit properties still retaintheir watan character will not be binding on Government, the best course for Government will be not to take any actionin the matter. If, however, Revenue Department considers that the issue should be decided by the court after hearing the views of Governme t, the district Government Pleader may be asked to apply to the Court to make Government party to the suit. It is, however, doubtful whether such application will be granted by the court.

P.N.M.

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U.R. to R.D.No. 311, dated the16th January 1941.

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The Kulkarni watan lands in the present case were forfeited under section 56 of the Land Revenue Code for non-payment of the land revenue and were thereafter entered in land records as unalienated and unoccupied lands and the arrears of land revenue were written off. Subsequently the lands were put to sale and have been purchased by the son of the original holder. The sale of the lands has, however, not been confirmed. It appears that before the lands were forfeited some amount of tagai was due from the occupant of these lands and that the lands had also been mortgaged to a Co-operative society. After the lands were forfeited and entered in Government records as Government waste, they vested in Government free from all incumbrances. (See section 56 of the Land Revenue Code). When, therefore the lands were put to sale in May 1940 they were being sold as ordinary Government waste lands and not for the recovery of land revenue arrears which were previously due in respect of these lands. Consequently it will not now be possible to confirm the sale subject to the mortgage in favour of the Co-operative Society. Also Government is not bound to refund the balance of the sale proceeds after deducting therefrom the Government dues and the costs of the sale to the original holder. The Commissioner recommends that the collector should be asked to confirm the sale and that the lands should then be restored to the applicant on the original tenure on condition that the mortgage to the Co-operative Society is revived. The lands will however have to be restored to the applicant as soon as the sale is confirmed. Also as stated above, the sale cannot be confirmed subject to the mortgage in favour of the Co-operative Society. The Commissioner's proposal is therefore not legally in order. The watan character of the lands can only be restored under section 22 of the Watan Act. It appears that the best course

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in this case, therefore, will be that the sale should be confirmed and the lands handed over to theapplicant. If Government decide to restore the watan character ~~of~~ the lands, the applicant may be informed that Government will do so after he has revived the mortgage in favour of the Co-operative Society.

O.C. P.N.M.

Remembrancer of Legal Affairs.

U.R. to R.D.No. 639, dated the 23rd January 1941.

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